

INVITATION FOR BIDS

No. 2016-04

Mississippi

***Preapproved List of Vendors for
Security Services***



Personal Service Contract Review Board

Mississippi State Personnel Board

210 East Capitol Street, Suite 800

Jackson, Mississippi 39201

Contact: *Catoria Martin*

catoria.martin@mspb.ms.gov

Date: *October 18, 2016*

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GENERAL INSTRUCTIONS

Section 1 – Authority

The Legislature established the Personal Service Contract Review Board (hereinafter “PSCRB”) in 1997. The PSCRB “may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board.” Miss. Code Ann. § 25-9-120 (3)(d).

Section 2 – Purpose

The PSCRB seeks to establish a Preapproved List of Vendors (hereinafter “PVL”) for Security Services for use by state agencies (hereinafter “agencies” or “agency”) under the purview of the PSCRB. The PSCRB invites bids from qualified security services providers for placement on the list. After the list is established, agencies may select and contract with Vendors from the list, avoiding the need for procurement. Contracts over \$75,000 must be approved by the PSCRB. Vendor(s) agree to extend services under this Invitation for Bids (hereinafter “IFB”) to all authorized agencies within the geographic limits of the regions bid upon in the State of Mississippi at the same price and under the same terms and conditions offered in this PVL.

Section 3 – Timeline

Invitation for Bid (IFB) Issue Date:	October 18, 2016
Questions and Requests for Clarification to PSCRB Deadline:	November 1, 2016, 5:00 PM CST
Anticipated Posting of Written Answers to Questions:	November 8, 2016, 5:00 PM CST
Bid Package Submission Deadline:	November 17, 2016, 1:00 PM CST
Bid Opening:	November 17, 2016, 2:00 PM CST
Anticipated Date of the Notice of Intent to Award:	November 28, 2016, 5:00 PM CST
Anticipated Post-Award Debriefing Request Due Date:	December 6, 2016, 5:00 PM CST
Anticipated Post-Award Debriefing Held By Date:	December 12, 2016, 5:00 PM CST
Protest Deadline Date:	December 15, 2016, 1:00 PM CST

Section 4 – PSCRB Contact and Questions/Requests for Clarification

4.1 All questions and requests for clarification must be directed by **email** to:

Catoria Martin, Director
Personal Service Contract Review Board
Email: catoria.martin@mspb.ms.gov

4.2 Questions and requests for clarification must be submitted via email by the deadline reflected in Section 3.

- 4.3** All questions, requests for clarification, and answers will be published on the Mississippi State Personnel Board (hereinafter “MSPB”) website (<http://www.mspb.ms.gov>) in a manner that all bidders will be able to view by the date and time reflected in Section 3.
- 4.4** The PSCRB will not be bound by any verbal or written information that is not contained within this IFB unless formally noticed and issued by the contact person.
- 4.5** Should an amendment to the IFB be issued, it will be posted on the MSPB website (<http://www.mspb.ms.gov>) in a manner that all bidders will be able to view. Further, bidders must acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid package, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment should be received by the PSCRB by the time and at the place specified for receipt of bids as reflected in Section 11.2. It is the bidder’s sole responsibility to monitor the website for amendments to the IFB.

Section 5 – Scope of Services

- 5.1** Uniformed, unarmed, and armed security may be provided in two separate formats: foot patrols and vehicular patrols depending on the Contracting Agency’s requirements. Foot patrol services may include the use of motorized and non-motorized means of transportation as provided by the Contracting Agency (such as golf-cart, Segway, or bicycle, etc.). Vehicular patrols will be conducted in a vehicle provided by the vendor. Please note there is one bid form with all formats provided in Appendix D. Bidders may bid on one, two, three, or all formats. Guard services are to be provided in three categories: (1) one guard during regular business hours (generally 7:00 AM to 7:00 PM) with option for additional guard or guards; (2) one guard after business hours (generally 7:00 PM to 7:00 AM) with option for additional guard or guards; and, (3) one guard twenty-four (24) hours a day with option for additional guard or guards. Services are generally to be provided Monday through Friday (except State holidays). Contracting Agencies may designate a different beginning and ending time with the selected vendors, as well as Saturday, Sunday and holiday service. Bidders may bid on one, two, or all three categories.
- 5.2** Services to be provided include safeguarding the agency employees and a large range of facilities (some facilities could be potential terrorist targets). Examples of agency facilities include, but are not limited to, the following: office buildings, hospitals, schools, warehouses, water reservoirs, and communications networks, etc. Each agency may have more than one location and in different regions of the state. Some agencies may require 24/7 on-site security presence, others need coverage only during regular business hours; still others may only require security services on weekends or during unique short-term events (i.e. specific threat, job fairs, art exhibits, etc.). Examples of services to be provided include, but are not limited to, the following: allowing only authorized persons access to the building(s); maintaining an activity log (electronic or paper) in accordance with Contracting Agency requirements (such as accepting UPS, FedEx, or other package deliveries); monitoring and investigating all internal alarm systems (such as fire); escorting agency employees to conduct agency banking business; checking to ensure all entrances and exits are secure at the end of the day; deterring acts of vandalism, graffiti, burglary,

trespassing, and other hazardous, criminal, or unauthorized activities; conducting security patrols in accordance with the routes and schedules established in the post orders; responding to calls regarding fires, bomb threats, or any other emergency situations; roving patrol of property to detect and prevent criminal or unauthorized activities; and monitoring the employee parking area which may require a guard to be stationed outside. The selected preapproved vendors must have a field supervisor on-call twenty-four (24) hours a day to deal with any security issues which arise. Additional services may be required by the Contracting Agency.

- 5.3 Any guard provided must have a minimum of two (2) years' experience as a security officer, or two (2) years' experience in a branch of law enforcement or other type of protective service.
- 5.4 The guards must be capable and trained to handle any and all incidents in a legal and professional manner.
- 5.5 Any guard provided must have undergone a thorough criminal background check including, but not limited to: fingerprint check, criminal records check, sex offender registration records check, and drug screening at the vendor's expense and prior to hire. Proof of the criminal background check must be provided to the Contracting Agency upon written request.
- 5.6 Contracting Agencies may have additional minimum requirements, including specific certifications, licenses, designations, and/or trainings pertinent to agency operations. Examples include, but are not limited to, the following: valid Mississippi driver's license; successful drug test passage; completion of specialized training (i.e. weapons, reporting, canine, terrorism, FEMA, First Aid, Automated External Defibrillator (AED), School Resource Officer, etc.). If required, the vendor must provide copies to the agency. All certifications and licenses should be current and maintained in accordance with the contract.
- 5.7 Any *armed* guard provided must be authorized to carry weapons in the State of Mississippi with a copy of the weapon permit provided to the hiring agency. All weapon permits should be current and maintained in accordance with the contract. The agency may have additional weapon qualification requirements as identified by the agency in the contract.
- 5.8 The preapproved vendor list will be region-specific. The services may be provided in eight different regions of the state, including: (1) North Delta; (2) Northeast; (3) South Delta; (4) East Central; (5) Central; (6) Pinebelt; (7) Southwest; and, (8) Coastal. There will be a separate preapproved vendor list for each of these regions. (See **Attachment A** for a map showing the regions and a listing of counties in each region). Bidders may bid to provide services in one or more regions, or they may bid on all regions. Bidders placing bids on more than one region should submit a **complete and separate bid package for each region** and mail or deliver in a separate sealed envelope for each region bid. To bid on a region, bidders must complete the Bid Package and certify that they can provide services for the entire region. For each region, the three (3) lowest qualified bidders for each of the security guard service formats and categories will be added to the preapproved vendor list.

(See 6.1 below.) **Being placed on the preapproved vendor list does not guarantee contracts will be issued.**

- 5.9** Detailed scope and specific requirements of the work required will be provided by the Contracting Agency when a Vendor on the preapproved list is selected for consideration with respect to a specific project or need. Such scope and requirements will include, but are not limited to, description of work activities, definition of particular deliverables, time frames, and budget parameters. Contracting Agencies providing specific services such as weapons, reporting, canine, terrorism, FEMA, First Aid, Automated External Defibrillator (AED), School Resource Officer, etc., may require contract security guards with experience in those specialized areas. This information is used to provide information to Contracting Agencies and will not affect awards.

Section 6 – Basis for Award

- 6.1** The PSCRB will average the bid price per hour of each service category bid with the bid price for providing additional guard(s). (See 5.1.) The PSCRB intends to make awards to the three responsive and responsible lowest bidders per region per averaged service category. These vendors will be placed on the preapproved vendor list for that region under the service category for which they bid. The list will then be divided into the three service categories with the winning bidders' bids ranked according to the lowest, second lowest, and third lowest price for each category. (See **Attachment B** for an example of how bids will be averaged, winning bidders chosen for a region, and winning bidders ranked for each service category. This is for illustrative purposes only.)
- 6.2** A Contracting Agency is encouraged, but not required, to contact the lowest priced preapproved Vendor for the security guard service or services needed. If that Vendor is unable to supply the service, the Contracting Agency may contact the next lowest Vendor. If that Vendor cannot supply the service, the Contracting Agency may contact the third lowest Vendor.
- 6.3** **Vendors bidding on more than one region may bid different rates in different regions.**

Section 7 – Contract Deliverables

- 7.1** Upon execution of a contract with a Contracting Agency, vendors on the preapproved vendor list shall, with respect to all security guards provided to a Contracting Agency:
- 7.1.1** Assign a Contractor Account Representative to work directly with the Contracting Agency Representative;
 - 7.1.2** Designate a contact person available twenty-four (24) hours daily for communication with the Contracting Agency, if required;
 - 7.1.3** Fulfill agency requests for guard(s) within twenty-four (24) hours of request (see 7.1.4 and 7.1.5);

- 7.1.4** Maintain a sufficient pool of qualified guards large enough that if, for any reason, the scheduled guard does not report for duty or must be replaced, the security company can **provide a replacement guard within two hours after notification**;
- 7.1.5** Replace, at no additional expense to the Contracting Agency, any guard not performing satisfactorily within two (2) hours;
- 7.1.6** Ensure that the guard(s) are in complete uniform and well-groomed at all times;
- 7.1.7** Provide all materials, serviceable firearms, ammunition, nightsticks, serviceable flashlights, rain gear, uniforms which are clean, in good repair, easily recognizable and identify the guard as an employee of the vendor, and any other miscellaneous equipment which may be needed;
- 7.1.8** Provide the required number of qualified, competent, well-trained, drug-free, and appropriately dressed security guards to perform the duties required during the shifts required, seven days a week, including weekends and holidays as needed;
- 7.1.9** Ensure that the contract security guard reports to work at the time and place specified by the Contracting Agency;
- 7.1.10** Abide by all ordinances and laws pertaining to the agency's operation and secure all required licenses, permits, certifications, trainings, background investigations, fingerprint checks, and drug tests;
- 7.1.11** Ensure that contract security guards fully comply with the policies and procedures of the Contracting Agency to which they are assigned, the applicable standards, Joint Commission standards, and all applicable regulations as now existing or as may be modified;
- 7.1.12** Ensure that guard(s) do not engage in personal activities (such as, but not limited to texting, personal phone calls, reading magazines, etc.) while on the job, and that guards comply with the Contracting Agency's restrictions regarding visitation with friends, family members, or acquaintances while on the job;
- 7.1.13** Ensure that guard(s) do not vacate their post during or at the end of their shift unless relieved by appropriate duty personnel, and arrange for replacement personnel for shift changes, breaks, and for unanticipated events (i.e. illness, family emergency, etc.);
- 7.1.14** Ensure that no security guard or supervisor work more than twelve (12) hours including any and all breaks, in a twenty-four (24) hour period; the Contracting Agency, in an emergency situation, can waive this requirement when the circumstances are beyond the control of the Vendor;
- 7.1.15** Ensure that guards working in prisons, courts, and similar environments comply with any Contracting Agency restrictions regarding contact with any inmate, any

member of the inmate's family, or any of the inmate's friends, on-site or off, except in a manner that supports the contract;

- 7.1.16** Provide vehicle(s) and display "Security" on the driver and front passenger door if providing the optional patrol vehicle(s);
- 7.1.17** Operate and maintain vehicle(s) in accordance with all applicable laws and regulation of the State of Mississippi and those established by the Contracting Agency at the Vendor's expense;
- 7.1.18** Abide by all State and/or agency policies, procedures, ordinances, and/or laws pertaining to the Contracting Agency's operation at all times, including but not limited to the items listed below. Deviations from these policies by the Vendor or its personnel will not be tolerated and will be considered grounds for contract termination:
 - 7.1.18.1** All state facilities are non-smoking; the Vendor and its personnel must adhere to this requirement. The use of tobacco products is prohibited, except within designated smoking areas.
 - 7.1.18.2** It is illegal to have in one's possession any illegal drug or alcoholic beverage while on state property. Vendor personnel shall not consume any illegal or illegally obtained drug or alcoholic beverage while on duty.
 - 7.1.18.3** The Vendor's personnel should refrain from using foul, abusive, or profane language on state property.
 - 7.1.18.4** The Vendor's personnel shall not flirt or fraternize with Agency personnel or any visitor at the Agency.
 - 7.1.18.5** Vendor's personnel shall not solicit or otherwise interfere with the work of the Contracting Agency employees.
 - 7.1.18.6** Vendor's personnel shall not engage in personal activities (such as, but not limited to texting, personal phone calls, reading magazines, etc.) while on the job, and shall comply with the Agency's restrictions regarding visitation with friends, family members or acquaintances while on the job.
 - 7.1.18.7** The Contracting Agency reserves the right to inspect and search all Vendor personnel and/or vehicles anytime while on facility grounds.
 - 7.1.18.8** Vendor personnel are required to sign-in and sign-out at most state facilities. Security provisions for all state facilities must be strictly observed.
 - 7.1.18.9** Vendor personnel may be required to provide photographic identification for inspection upon entering state facilities and/or grounds. Vendor identification badges, personal identification of the individual employee,

and/or visitor badges shall be worn and clearly visible while on state property.

7.1.19 Accurately describe the job duties required to its contract worker(s) and/or employee(s).

7.1.20 Perform all services provided in the contract between the Vendor and the Contracting Agency in accordance with customary and reasonable industry standards as well as in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agencies. No statement within this IFB shall negate compliance with any applicable governing regulation. The absence of detailed specifications or the omission of a detailed description shall be recognized as meaning that only the best commercial practices are to prevail.

7.2 Vendors shall also:

7.2.1 Administer and maintain all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal, and local laws such as social security and withholding taxes;

7.2.2 Make all unemployment compensation contributions as required by federal and state law(s) and process claims as required;

7.2.3 Ensure that all security personnel receive and pass a drug test prior to hire and provide copies of all personnel drug test as required by the agency (test must show that employees are drug free);

7.2.4 Conduct periodic drug testing of security personnel at the vendor's expense throughout the year at a minimum of twice per year and provide copies of the results as required by the Agency;

7.2.5 Provide CPR-certified guards and a copy of the appropriate certification as required by the Agency;

7.2.6 Employ only qualified personnel who are proficient in performing assigned tasks, are drug-free, and proficient in the English language;

7.2.7 Provide a copy of current license as applicable, for each contract *armed* security guard worker assigned to the Contracting Agency prior to or upon clocking in for a scheduled shift;

7.2.8 Perform a background check and/or drug screening prior to hire and, if requested, verify and/or provide the results to the Contracting Agency;

7.2.9 Arrange for a Contracting Agency to interview a potential new security guard worker, at the bidder/vendor's expense, for a period of up to one (1) hour; and,

- 7.2.10** Arrange for contract security guard workers to attend agency-specific orientation, not to exceed two (2) hours, prior to beginning first assignment, if requested by the Contracting Agency (in which case, license must be provided prior to orientation).

Section 8 – Minimum Bidder Qualifications to be Deemed Responsible

- 8.1** Bidder must have been in business and providing security guards similar in requirements and scale to those described in this IFB for a minimum of three (3) years.
- 8.2** Bidder must have provided a minimum of thirty (30) security guard placements over the past two (2) years.
- 8.3** Bidder should maintain an office in each region bid (or, if bidder does not have an office in the region, bidder must explain how it will service the region bid on the Bid Cover Sheet, **Attachment C**) and must provide all the required information for each region bid, for verification purposes.
- 8.4** Bidder must maintain a pool of qualified security guards to fill the requests from Contracting Agencies. Please provide the average number of guards you have that meet the minimum requirements for each security guard service category for which you bid.
- 8.5** Contracting Agencies may have additional minimum requirements, including specific certifications, licenses, designations, and/or trainings pertinent to the Contracting Agency's operations. Examples include, but are not limited to, the following: valid Mississippi driver's license; successful drug test passage; and completion of specialized training. If required, the Vendor must provide copies of the certifications, licenses, designations, etc., to the Contracting Agency. All certifications and licenses should be current and maintained in accordance with the contract.
- 8.6** These minimum qualifications are in addition to a minimum score of six on the Reference Score Sheet (**Attachment F**) from reference interviews by the PSCRB with **two** bidder references (for a total minimum score of twelve), as well as all other requirements of this IFB. (See **Section 11.1.3** and **Attachments E and F**.)

Section 9 – Duration

Vendors added to the preapproved vendor list will remain on the list until March 18, 2020, at which time that list will expire. However, if a Contracting Agency enters into a contract with a preapproved Vendor prior to the expiration date of March 18, 2020, that contract may be renewed at the same rates listed on the PVL until March 18, 2022. Prices submitted in response to the IFB will remain firm, valid, and renewable until March 18, 2022, except that a bidder may raise prices to reflect a rise in the federal minimum wage, but only to the extent of the actual minimum wage increase.

Section 10 – Removal from Preapproved List of Vendors for Security Services

Vendors added to the preapproved vendor list may be removed from the list for cause by the PSCRB or added to the debarment list pursuant to Section 5-101, Debarment or Suspension, of the *Mississippi Personal Service Contract Review Board's Rules and Regulations*. Vendor's failure to honor submitted rates through March 18, 2022 may result in removal from the preapproved vendor list and/or debarment.

Section 11 – Bid Submission Requirements

11.1 Submission Format

The bid package must be sealed and must contain the following:

11.1.1 Bid Cover Sheet (**Attachment C**).

11.1.2 Bid Form (**Attachment D**) – all pricing must be submitted on the bid form. Bidders may bid on one, two, or all three categories as well as on one, two, three, or all four formats. Failure to complete and/or sign the bid form may result in bidder being determined non-responsive.

11.1.3 References (**Attachment E**) – each bidder must furnish a listing of **at least three (3) trade references** along with the contact person, address, and phone number for each. These references must be familiar with the bidder's abilities in the areas involved with this solicitation. The PSCRB will use these references to determine the bidder's ability to perform the services. It is the responsibility of the bidder to ensure that the reference contact information is correct and current. Bidders should verify before submitting their bid that the contact person and phone number are correct for each reference. **The PSCRB must be able to reach two references for a bidder within two (2) business days of bid opening to be considered responsive. Further, the bidder must score a minimum of six (6) points on each Reference Score Sheet which will be used by the PSCRB staff when interviewing the two (2) references (for a total minimum scoring requirement of twelve (12) points) to be considered responsive and/or responsible. (See Section 8.5 and Attachments E and F.)** Only bidders who are found responsive and responsible will have their bids considered. Bidder may submit as many references as desired. The PSCRB will begin contacting references at the top of the list and will continue down the list until they have completed Reference Score Sheets for two references. After two score sheets are completed, the reference check process will end.

11.2 Submission Requirements

11.2.1 Bidders placing bids on more than one region should submit a **complete and separate bid package for each region** and mail or deliver in a separate sealed envelope for each region bid.

- 11.2.2** The original and one copy of the bid package shall be signed and submitted in a sealed envelope or package to 210 East Capitol Street, Suite 350, Jackson, MS 39201 no later than **1:00 PM CST, Thursday, November 17, 2016**. (*Also see, 11.2.4. and 11.2.12.*)
- 11.2.3** Timely submission of the bid package is the responsibility of the bidder. Bids received after the specified time will be rejected and shall remain unopened in the procurement file.
- 11.2.4** The envelope or package shall be marked with the bid opening date and time, and the number of the Invitation for Bids (2:00 PM CST, Thursday, November 17, 2016 No. 2016-04).
- 11.2.5** The time and date of receipt will be indicated on the envelope or package by the MSPB or PSCRB staff.
- 11.2.6** Each page of the bid form and all attachments shall be identified with the name of the bidder.
- 11.2.7** Failure to submit a bid on the bid form provided will be considered cause for rejection of the bid. **Modifications or additions to any portion of the bid document may be cause for rejection of the bid.**
- 11.2.8** The PSCRB reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive.
- 11.2.9** As a precondition to bid acceptance, the PSCRB may request the bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.
- 11.2.10** Any bidder claiming that its response contains information exempt from the Mississippi Public Records Act (Miss. Code Ann. §§ 25-61-9 *et seq.*, and 79-23-1), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption.
- 11.2.11** All bid packages must be received by PSCRB no later than **1:00 PM CST, Thursday, November 17, 2016**. Bids submitted via facsimile (faxes) **will not** be accepted. It is suggested that if a bid is mailed to PSCRB, it should be posted in certified mail with a return receipt requested. The only acceptable evidence to establish the date of mailing is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Bidders should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper.

11.2.12 Sealed bids should be mailed or hand-delivered to and labeled as follows:

Security Services Preapproved Vendor List
Bid No. 2016-04
Region: _____
Opening Date: 2:00 PM CST, November 17, 2016
Personal Service Contract Review Board
Attention: Catoria Martin
210 East Capitol Street, Suite 350
Jackson, Mississippi 39201
SEALED BID – DO NOT OPEN

Section 12 – Bidder Certification

The bidder agrees that submission of a signed bid form is certification that the bidder will accept an award made to it as a result of the submission.

Section 13 – Debarment

By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi and federal government.

Section 14 – Registration with Mississippi Secretary of State

By submitting a bid, the bidder certifies that it is registered to do business in the State of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by the PSCRB that it has been placed on the preapproved vendor list.

Section 15 – Insurance

15.1 Each successful bidder shall maintain insurance which, at a minimum, shall include the following types of insurance and coverage limits:

- **Comprehensive General Liability or Professional General Liability - \$1,000,000** each occurrence for bodily injury, personal injury, accidental death, and property damage, with the State of Mississippi added as an additional insured;
- **Workers' Compensation** as required by the State of Mississippi, with the State of Mississippi added as an additional insured; and,
- **Employee Dishonesty Insurance or Fidelity Bond Insurance** with third party liability coverage and with limits of \$1,000,000.

- 15.2** Each successful bidder may be required to maintain the following types of insurance with coverage limits as identified and required by the agency:
- **Automobile Liability Insurance** covering all vehicles, owned or otherwise, used in the contract work with limits of \$1,000,000 for injuries including accidental death to any person and subject to the same limit for each person for any one accident involving two or more persons; and
 - **Automobile Property Damage Insurance** covering all property damage by automobile with limits of \$1,000,000 for all property damage by automobile.
- 15.3** All insurance policies will list the *State of Mississippi* as an additional insured and, upon request; the Vendor will provide copies of any insurance documentation to the Contracting Agency.
- 15.4** All insurance policies shall be issued by companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.
- 15.5** The Contracting Agency may reserve the right to request from carriers, certificates of insurance regarding the required coverage.
- 15.6** Agencies may require greater limits and may negotiate with Vendors regarding the same. **THIS IS THE ONLY NEGOTIABLE CONTRACT TERM.**

Section 16 – Bid Opening

Bid opening will be open to the public; however, this will include opening, reading, and listing the bid price on each bid only. No discussions will be entered into with any bidder as to the quality or provisions of the specifications and no award will be made either stated or implied at the bid opening.

Section 17 – Award Notification

Awards for this procurement will be posted on the Mississippi State Personnel Board website (<http://www.mspb.ms.gov>). Bidders will be notified via e-mail of the awards. Additionally, a letter will be sent to all bidders.

Section 18 – Procurement Methodology

18.1 Restrictions on Communication with PSARB and MSPB Staff

At no time shall any bidder or its personnel contact, or attempt to contact, any PSARB or MSPB staff regarding this IFB except the contact person as set forth and in the manner prescribed in Section 4.

18.2 Cost of Preparing Bid

The PSCRB and MSPB accept no responsibility for any expense incurred by any bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

18.3 Independent Price Determination

By submitting a bid, the bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the bid. The prices quoted shall be inclusive of, but not limited to the following: all required equipment/material; all required insurance; all required overhead; all required profit; and, all required licenses, certifications, fees, or permits.

18.4 Rejection of Bids

A bid response that includes terms and conditions that do not conform to the terms and conditions in the Invitation for Bids document is subject to rejection as non-responsive. Further, submission of a bid form that is not complete and/or signed is subject to rejection as non-responsive. The PSCRB reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the PSCRB of non-responsiveness based on the submission of nonconforming terms and conditions. Furthermore, if a bidder's price is substantially higher than those of other bidders, meaning those in excess of a twenty-five percent (25%) differential, the bidder's price will be deemed non-responsive.

18.5 Withdrawal of Bid

18.5.1 If a bid is substantially lower than those of other bidders, a mistake may have been made.

18.5.2 A bidder may withdraw its bid from consideration if certain conditions are met:

- (1) The bid is submitted in good faith;
- (2) The bid is substantially lower than those of other bidders because of a mistake;
- (3) The mistake is a clerical error, not an error of judgment; and,
- (4) Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the bid demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.

18.5.3 To withdraw a bid that includes a clerical error after bid opening, the bidder must give notice in writing to the PSCRB of its claim of right to withdraw a bid. Within two (2) business days after the bid opening, the bidder requesting withdrawal

must provide to the PSCRB all original work papers, documents, and other materials used in the preparation of the bid.

- 18.5.4** A bidder may also withdraw a bid, prior to the time set for the opening of bids, by simply making a request in writing to the PSCRB. No explanation is required.

18.6 Post-Award Debriefing

A bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Director of the PSCRB within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify the Director of the PSCRB in writing and identify its attorney by name, address, and telephone number. The PSCRB will schedule and/or suspend and reschedule the meeting at a time when a representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Sections 7-114 through 7-114.07, Post-Award Vendor Debriefing, of the *Personal Service Contract Review Board's Rules and Regulations*.

18.7 Protest of Award

Any actual or prospective bidder who is aggrieved in connection with this solicitation or the outcome of this Invitation for Bids may file a protest with the Director of the PSCRB. The protest shall be submitted on or before **1:00 PM CST, Thursday, December 15, 2016**, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the bidder or an individual authorized to sign contracts on behalf of the protesting bidder, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) and regulation(s) or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting bidder must provide facts and evidence to support the protest. A protest is considered filed when received by the Director of the PSCRB via either U.S. mail, postage prepaid, or by personal delivery. Protests filed after **1:00 PM CST, Thursday, December 15, 2016**, will not be considered.

Section 19 – Required Contract Terms and Conditions

Any contract entered into with a Contracting Agency pursuant to a Vendor/bidder being placed on the preapproved vendor list shall have the required clauses found in **Attachment G** and those required by the *Personal Service Contract Review Board's Rules and Regulations* as updated.

Section 20 – Optional Contract Terms and Conditions

Any contract entered into with a Contracting Agency pursuant to a Vendor/bidder being placed on the preapproved vendor list may have, at the discretion of the Contracting Agency, the optional clauses found in **Attachment H** and those within the *Personal Service Contract Review Board's Rules and Regulations* as updated.

Section 21 – Note to Agencies and Vendors

Agencies are cautioned that this procurement may not comply with guidelines from outside funding sources such as the federal government or various grants. It is the Contracting Agency's responsibility, when using such funding sources, to verify that this Invitation for Bids meets all state and federal procurement requirements. **This procurement does not replace currently active service contracts, and agencies will not be asked to terminate their current contracts.** Agencies do not have to contract with the vendors on the preapproved vendor list; however, using Vendors from the list will eliminate the need for procurement.

Section 22 – Mississippi State Personnel Board (MSPB) Website

This Invitation for Bid, questions and answers concerning this Invitation for Bids, and the Preapproved List of Vendors for Security Services will be posted on the MSPB website (<http://www.mspb.ms.gov>).

Section 23 – Attachments

The attachments to this Invitation for Bids are made a part of this Invitation for Bids as if copied herein in words and figures.

ATTACHMENT A

North Delta

Coahoma
Desoto
Grenada
Panola
Quitman
Tallahatchie
Tate
Tunica
Yalobusha

North
Delta



Northeast

Alcorn
Benton
Calhoun
Chickasaw
Itawamba
Lafayette
Lee
Marshall
Monroe
Pontotoc
Prentiss
Tippah
Tishomingo
Union

South Delta

Bolivar
Carroll
Holmes
Humphreys
Issaquena
Leflore
Sharkey
Sunflower
Washington

South
Delta



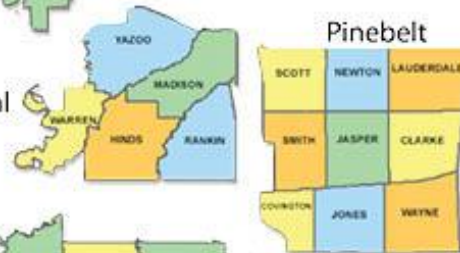
East Central

Attala
Choctaw
Clay
Kemper
Leake
Lowndes
Montgomery
Neshoba
Noxubee
Oktibbeha
Webster
Winston

Central

Hinds
Madison
Rankin
Warren
Yazoo

Central



Pinebelt

Clarke
Covington
Jasper
Jones
Lauderdale
Newton
Scott
Smith
Wayne

Southwest

Adams
Amite
Claiborne
Copiah
Franklin
Jefferson
Jefferson Davis
Lawrence
Lincoln
Pike
Simpson
Walthall
Wilkinson

Southwest



Coastal

Forrest
George
Greene
Hancock
Harrison
Jackson
Lamar
Marion
Pearl River
Perry
Stone

ATTACHMENT B

Illustrative Example of Awarding Placement on Preapproved Vendor List and Ranking of Bids per Format

Hourly cost will be totaled and averaged per company. After averaging, the three (3) lowest, averaged bids will be placed on the list for that region and ranked according to the lowest, second lowest, and third lowest price per format.

Example Bids (per hour with markup) for *unarmed foot patrol security guard services* for Central Region:

The example costs may not reflect actual rates on current contracts and may be higher or lower than current rates. This information should not be relied upon when submitting a bid.

<u>Bidder</u>	<u>Business Hours One Guard</u>	<u>Additional Guard*</u>	<u>Average Bid Price</u>
Company A	\$10	\$10	\$10.00
Company B	\$13	\$9	\$11.00
Company C	\$20	\$17	\$18.50
Company D	\$14	\$11	\$12.50
Company E	\$15	\$8	\$11.50
Company F	\$16	\$12	\$14.00

Winning Bidders for Business Hours Guard(s): Companies A, B, and E

Winning Bidders ranked **lowest to highest**: Company A, Company B, Company E

- An agency needing Business Hours Guard(s) in the Central Region would contact Company A first, then Company B second, and then Company E.

<u>Bidder</u>	<u>After Business Hours One Guard</u>	<u>Additional Guard*</u>	<u>Average Bid Price</u>
Company A	\$15	\$11	\$13.00
Company B	\$17	\$10	\$13.50
Company C	\$22	\$15	\$18.50
Company D	\$18	\$12	\$15.00
Company E	\$17	\$10	\$13.50
Company F	\$16	\$12	\$14.00

Winning Bidders for After Business Hours Guard(s): Companies A, B, and E

Winning Bidders ranked **lowest to highest**: Company A, Companies B and E (tie)

- An agency needing After Business Hours Guard(s) in the Central Region would contact Company A first, then Company B or E, second and third.

<u>Bidder</u>	<u>Twenty-Four Hours One Guard</u>	<u>Additional Guard*</u>	<u>Average Bid Price</u>
Company A	\$35	\$20	\$27.50
Company B	\$25	\$10	\$17.50
Company C	\$22	\$15	\$18.50
Company D	\$24	\$14	\$19.00
Company E	\$24	\$12	\$18.00
Company F	\$20	\$18	\$19.00

Winning Bidders for Twenty-Four Hours Guard(s): Companies B, C, and E

Winning Bidders ranked **lowest to highest**: Company B, Company E, and Company C

- An agency needing Twenty-Four Hours Guard(s) in the Central Region would contact Company B first, then Company E, then Company C.

***Per additional guard.**

ATTACHMENT C

BID COVER SHEET

The Personal Service Contract Review Board, on behalf of the State of Mississippi, plans to develop a Preapproved Vendor List of Providers for Security Services, and invites your bid.

Security Services include: Unarmed Foot Patrol, Armed Foot Patrol, Unarmed Vehicular Patrol (with vehicle provided by Vendor), and Armed Vehicular Patrol (with vehicle provided by Vendor).

Services listed above will be provided by region. *See* map of regions in **Attachment A**.

Bids are to be submitted as listed below, on or before 1:00 PM CST, Thursday, November 17, 2016.

PLEASE MARK YOUR ENVELOPE: **Security Services Preapproved Vendor List
Bid No. 2016-04**

Region: _____

Opening Date: 2:00 PM CST, Nov. 17, 2016

Personal Service Contract Review Board

Attention: Catoria Martin

210 East Capitol Street, Suite 350

Jackson, Mississippi 39201

SEALED BID – DO NOT OPEN

Name of Company: _____

Quoted By: _____

Signature: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Fax Number: _____

E-Mail Address: _____

Name and phone number of Company Representative to be contacted by Agencies seeking to contract for services pursuant to this IFB: _____

FEI/FIN # (if company, corporation, or partnership):	
SS# (if individual):	

In addition to providing the above contact information, please answer the following questions regarding your company:

What year was your company started? _____

How many years and/or months has your company been in the business of performing the services called for in this IFB? _____

Please provide the physical location and mailing address of your company's home office, principal place of business, and place of incorporation. _____

If your company is not physically located in the region, how will you supply professional security services to Contracting Agencies in the region? _____

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms. _____

Is your company licensed and/or certified to provide professional security services as required by any and all applicable federal and state law(s)? _____

List all licenses or permits your company possesses that are applicable to performing the services required in this IFB. _____

How many contract security guards has your company placed in the past two (2) years?

Armed	
Unarmed	

How many customers of comparable type and/or size of operation has your company provided these services for in the past two (2) years?

Armed	
Unarmed	

What is the average number of guards you currently have that meet the minimum requirements for each professional security service category?

Armed	
Unarmed	

List the number of guards you currently have that meet the minimum requirements for each professional security service category living within the Region bid?

Armed	
Unarmed	

Describe any specific services such as weapons, reporting, canine, terrorism, FEMA, First Aid, Automated External Defibrillator (AED), School Resource Officer, etc., which your company offers along with any specialized experience and/or education of your current contract security guards. _____

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on its right side, suggesting it's resting on a surface.

ATTACHMENT D

BID FORM FOR SECURITY SERVICES

Services to be provided in Region: _____

Company	Contact Person	Telephone Number

The pricing quoted shall be inclusive of, but not limited to the following:

1. All required equipment/material;
2. All required insurance;
3. All required overhead;
4. All required profit;
5. All required vehicles;
6. All required fuel, mileage, and travel time;
7. All required labor per man-hour and supervision;
8. The cost of any business and professional licenses, permits, or fees; and,
9. Any and all other costs.

All pricing professional security services should include all associated costs with no additional or hidden fees.

Bid Section for UNARMED FOOT PATROL SERVICES

Category of Service:	Hourly Rate for one guard (Unarmed Foot Patrol Services)	Hourly Rate for each additional guard
Business Hours Security Guard(s)		
After Hours Security Guard(s)		
Twenty Four Hours Security Guard(s)		

Bid Section for ARMED FOOT PATROL SERVICES

Category of Service:	Hourly Rate for one guard (Armed Foot Patrol Services)	Hourly Rate for each additional guard
Business Hours Security Guard(s)		
After Hours Security Guard(s)		
Twenty Four Hours Security Guard(s)		

Bid Section for UNARMED VEHICULAR PATROL SERVICES
(with vehicle provided by Vendor)

Category of Service:	Hourly Rate for one guard	Hourly Rate for each additional guard
Business Hours Security Guard(s)		
After Hours Security Guard(s)		
Twenty Four Hours Security Guard(s)		

Bid Section for ARMED VEHICULAR PATROL SERVICES
(with vehicle provided by Vendor)

Category of Service:	Hourly Rate for one guard	Hourly Rate for each additional guard
Business Hours Security Guard(s)		
After Hours Security Guard(s)		
Twenty Four Hours Security Guard(s)		

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges and certifies on behalf of the company:

1. That he/she has thoroughly read and understands the Invitation for Bids and Attachments thereto;
2. That the company meets all requirements and acknowledges all certifications contained in the Invitation for Bids and Attachments thereto;
3. That the company agrees to all provisions of the Invitation for Bids and Attachments thereto including, but not limited to, the Required and Optional Clauses to be included in any contract resulting from this IFB (**Attachments G and H**);
4. That the company will perform the services required at the prices quoted above;
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date;
6. The Vendor represents that its guards are licensed, certified and possess the requisite credentials to perform professional security services;
7. The Vendor represents that it has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this IFB; and,

8. **NON-DEBARMENT** - By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government.
9. **INDEPENDENT PRICE DETERMINATION** - The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the bid offered.
10. **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES** - The prospective contractor represents as a part of such Contractor's bid or proposal that such Contractor has/has not (*please circle applicable word or words*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
11. **REPRESENTATION REGARDING CONTINGENT FEES** - The Contractor represents that it has/has not (*please circle applicable word or words*) retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or other contingent fee, except as disclosed in the Contractor's bid or proposal.
12. **REPRESENTATION REGARDING GRATUITIES** - The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

Company Name: _____

Printed Name of Representative: _____

Date: _____

Signature: _____

Note: *Please be sure to circle the applicable word or words on numbers 10 (Prospective Contractor's Representation Regarding Contingent Fees) and 11 (Representation Regarding Contingent Fees) above. Failure to circle the applicable word or words and/or to sign the bid form may result in the bid being rejected as non-responsive. Modifications or additions to any portion of this bid document may be cause for rejection of the bid.*

ATTACHMENT E

REFERENCES

REFERENCE 1

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

REFERENCE 2

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

REFERENCE 3

Name of Company: _____

Dates of Service: _____

Contact Person: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Alternative Contact Person (optional): _____

Telephone Number: _____

Cell Number: _____

E-mail: _____

Bidder may submit as many references as desired by submitting as many additional copies of Attachment E, References, as deemed necessary. References will be contacted in order listed until two references have been interviewed and Reference Score Sheets completed for each of the two references. No further references will be contacted; however, bidders are encouraged to submit additional references to ensure that at least two references are available for interview. PSCRB must be able to contact two references within two (2) PSCRB business days of bid opening to be considered responsive.

ATTACHMENT F

Reference Score Sheet

TO BE COMPLETED BY PSCRB STAFF ONLY

Region: _____

Bidder Name: _____

Reference Name: _____

Person Contacted, Title/Position: _____

Date/Time Contacted: _____

Service From/To Dates: _____

Able to provide security guard(s) when you called?	Yes	No
Satisfied with the security guard (s) provided? If no, please explain.	Yes	No
Vendor easy to work with in scheduling security guard (s)?	Yes	No
Was the security services completed on time and within budget?	Yes	No
Vendor listened when you had an issue and readily offered a solution? (If never had an issue, please check here ____.)	Yes	No
Would you enter into a contract with them again?	Yes	No
Would you recommend them?	Yes	No

Each “yes” is one point; each “no” is zero points. Bidder must have a minimum score of “6” from two references (total of “12” points) to be considered responsible and for its bid to be considered.

Score: _____

Do you have any business, professional or personal interest in the bidder’s organization? If yes, please explain.	Yes	No
---	-----	----

Called by: _____

Notes: _____

ATTACHMENT G

Required Clauses for Service Contracts Resulting from this IFB

1. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the Federal Government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. Compliance with Laws. Contractor understands that the Agency is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
4. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.
5. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of

Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- c. both.

In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

6. Insurance. Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Contractor's personnel provided hereunder; comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000 per occurrence; and employee dishonesty insurance or fidelity bond insurance with minimum limits of \$1,000,000 with third party liability coverage. All general liability, professional liability, employee dishonesty, and fidelity bond insurance will provide coverage to the State of Mississippi as an additional insured. The Agency reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.
7. Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
8. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.
9. Renewal of Contract. The contract may be renewed at the discretion of the Agency upon written notice to Contractor at least [NUMBER] days prior to each contract anniversary date for a period of [NUMBER] successive one-year periods under the same prices, terms, and conditions as in the original contract and/or subsequent contracts. The total number of renewal years permitted shall not exceed [NUMBER], or extend past March 18, 2022.

10. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
11. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
12. Requirements Contract. During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the Agency shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the Agency for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the Agency is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the Agency may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.
13. Stop Work Order.
 - a. *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:
 - i. cancel the stop work order; or,
 - ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
 - b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- i. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
 - ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

14. Termination for Convenience.

- a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

15. Termination for Default.

- a. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

- c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
 - d. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
 - e. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
 - f. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
16. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
17. Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the

term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

18. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

ATTACHMENT H

Optional Clauses for Use in Service Contracts Resulting from this IFB (At Discretion of Contracting Agency)

Appendix H includes (alphabetically by title) various service contracting clauses which are available for use. Many clauses require the inclusion of additional information. A word or phrase in square brackets indicates that the information identified is to be inserted (e.g., *[time]*, *[date]*). Clarifications of clauses are in parentheses within or at the end of the clause. These clauses are discretionary and the Agency is neither required to use them nor prohibited from using others which are not included in this appendix.

1. Anti-assignment/Subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
2. Approval. It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.
3. Attorney's Fees and Expenses. Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.
4. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
5. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that Agency is a public agency of the State of Mississippi and is subject to the

Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to Agency pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Agency shall follow the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure of information required by court order or required by law.

6. Contractor Personnel. The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.
7. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:
 - (1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
 - (2) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
 - (3) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
 - (5) has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.
8. Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Miss. Code Ann. §§ 25-61-1 *et seq.*
9. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:
 - (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other

- than information obtained in confidence under prior engagements;
- (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
 - (3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
 - (4) is independently developed by the recipient without any reliance on confidential information;
 - (5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
 - (6) is disclosed with the disclosing party's prior written consent
10. Errors in Extension. If the unit price and the extension price are at variance, the unit price shall prevail.
11. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.
12. Failure to Enforce. Failure by the Agency at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Agency to enforce any provision at any time in accordance with its terms.
13. Final Payment. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against Contractor under this contract.
14. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

15. HIPAA Compliance. Contractor agrees to comply with the “Administrative Simplification” provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
16. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney’s fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State’s sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State’s concurrence, which the State shall not unreasonably withhold.
17. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.
18. Information Designated by Contractor as Confidential. Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or financial information.

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential

information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this agreement.

19. Integrated Agreement/Merger. This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.
20. Generally, (Contract Modification means any written alteration in contract requirements, deliverables, delivery point, rate of delivery, period of performance, , quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Modifications must be approved by the PSCRB pursuant to Section 7-111 (Modifications) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*. Modifications shall not grant extra compensation, fee, or allowance to any Contractor after service is rendered or contract is made, unless contemplated within the contract itself or unless the scope of services is increased. PVL prices are set and PVL scopes of services may not be substantively altered.) Modification or Renegotiation. This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.
21. No Limitation of Liability. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.
22. Notices. All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Agency:	For Contractor:
[Name, Title]	[Name, Title]
[Agency Name]	[Contractor Name]
[Address]	[Address]
[City, State, Zip]	[City, State, Zip]

23. Non-solicitation of Employees. Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.

24. Oral Statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Agency and agreed to by Contractor.
25. Ownership of Documents and Work Papers. Agency shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Agency and subject to any copyright protections.
26. (Please make sure you list all documents to be considered including amendments to the procurement or response, Questions and Answers to the procurement, etc. In addition, make sure the order of these documents always has State's documents first, and Contractor's documents last, in order to ensure that State's documents always take precedence. Consult with your Attorney General counsel if you have questions on the order of precedence. Delete if no documents need to be included.) Priority. The contract consists of this agreement with exhibits, the procurement IFB [number] (hereinafter referred to as IFB and attached as Schedule [____]), and the response bid dated [date] by [CONTRACTOR NAME] (hereinafter referred to as Bid and attached as Schedule [____]). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the Bid. Omission of any term or obligation from this agreement or attached Schedules [____] or [____] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
27. Quality Control. Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.
28. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

29. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency. The rights of the Agency are in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.
30. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
31. Right to Inspect Facility. The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.
32. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
33. State Property. Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.
34. Third Party Action Notification. Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.
35. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.
36. Waiver. No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or

otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.